

EXHIBIT C

*Order granting final approval of class action settlement in Bellows v. NCO
Financial Systems, Inc., 07-cv-01413-W-AJB (S.D. Cal. Dec. 22, 2008)*

In The Case Of

*Carrie Couser, Individually and on Behalf of All Others
Similarly Situated,*

v.

Comenity Bank

3:12-cv-02484-MMA-BGS

FILED

DEC 22 2008

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
DEPUTYUNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIADOUGLAS E. BELLOWS, on behalf of)
himself and all others similarly situated,)

Plaintiff,)

-against-)

NCO FINANCIAL SYSTEMS, INC.,)

Defendant.)

Case No. 3:07-cv-01413-W-AJB

**FINAL ORDER AND
JUDGMENT**

On August 2, 2007, plaintiff, Douglas E. Bellows (hereinafter referred to as "Plaintiff" or "Class Representative"), filed the above-captioned class action lawsuit (hereinafter referred to as the "Lawsuit") against defendant, NCO Financial Systems, Inc. (hereinafter referred to as "NCO"). Plaintiff asserted class claims against NCO under the Telephone Consumer Protection Act (hereinafter referred to as the "TCPA"), 47 U.S.C. § 227. Specifically, Plaintiff alleged that NCO violated the TCPA by calling his cellular telephone, without "prior express consent," using an "automatic telephone dialing system" and using an "artificial or prerecorded voice."

NCO denied any and all liability alleged in the Lawsuit.

On December 27, 2007, at the Parties' request, the Court appointed Judge Herbert B. Hoffman (Ret.) to serve as a Special Master per Fed. R. Civ. P. 53. Judge Hoffman was appointed to assist with all settlement issues, including issuing necessary reports and recommendations on proposed findings and orders in the case.

1 On August 14, 2008, after extensive arms-length negotiations, and 3 mediations
2 before Special Master Hoffman, Plaintiff and NCO (hereinafter jointly referred to as
3 the “Parties”) entered into a Class Action Settlement Agreement (hereinafter referred
4 to as the “Agreement”), which is subject to review under Fed. R. Civ. P. 23. Further,
5 NCO agreed to a 12-month Stipulation and Order for Injunction (hereinafter referred
6 to as the “Stipulated Injunction”).

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8 On August 29, 2008, the Parties filed the Agreement, along with their Joint
9 Motion for Preliminary Approval of Class Action Settlement Agreement (hereinafter
10 referred to as the “Preliminary Approval Motion”).

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12 In compliance with the Class Action Fairness Act of 2005, Pub. L. No. 109-2,
13 119 Stat. 4, on September 4, 2008, NCO served written notice of the proposed class
14 settlement on the United States Attorney General and the attorney general of each
15 state.

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17 On September 10, 2008, upon consideration of the Agreement, Preliminary
18 Approval Motion, Special Master Hoffman’s Report and Recommendation, and the
19 record, the Court entered an Order of Preliminary Approval of Class Action Settlement
20 (hereinafter referred to as the “Preliminary Approval Order”). Pursuant to the
21 Preliminary Approval Order, the Court, among other things, (i) preliminarily certified
22 (for settlement purposes only) a class of plaintiffs (hereinafter referred to as the “Class
23 Members”) with respect to the claims asserted in the Lawsuit; (ii) preliminarily
24 approved the proposed settlement and Stipulated Injunction; (iii) appointed Plaintiff
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1 Douglas E. Bellows as the Class Representative; (iv) appointed HYDE & SWIGART
2 and the LAW OFFICES OF DOUGLAS J. CAMPION as Class Counsel; and, (v) set
3 the date and time of the Fairness Hearing.
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5 On November 24, 2008, the Parties filed their Motion for Final Approval of
6 Class Action Settlement Agreement (hereinafter referred to as the "Final Approval
7 Motion"). Pursuant to their Final Approval Motion, the Parties request final
8 certification of the settlement class under Fed. R. Civ. P. 23(b)(2) and (b)(3) and final
9 approval of the proposed class action settlement.
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11 On December 2, 2008, a Fairness Hearing was held by Special Master Hoffman
12 pursuant to Fed. R. Civ. P. 23 to determine whether the Lawsuit satisfies the applicable
13 prerequisites for class action treatment and whether the proposed settlement is
14 fundamentally fair, reasonable, adequate, and in the best interest of the Class Members
15 and should be approved by the Court.
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17 Special Master Hoffman has issued another Report and Recommendation,
18 recommending that the Court finally certify this Lawsuit as a class action and finally
19 approve the proposed class action settlement, as requested by the Parties.
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21 The Court has read and considered the Agreement, Final Approval Motion,
22 Special Master Hoffman's Report and Recommendation, and the record. All
23 capitalized terms used herein have the meanings defined herein and/or in the
24 Agreement.
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26 NOW, THEREFORE, IT IS HEREBY ORDERED:
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1 1. JURISDICTION – The Court has jurisdiction over the subject matter of
2 the Lawsuit and over all settling parties hereto.

3 2. CLASS MEMBERS – Pursuant to Fed. R. Civ. P. 23(b)(2) and (b)(3),
4 the Lawsuit is hereby finally certified, for settlement purposes only, as a class action
5 on behalf of the following Class Members with respect to the claims asserted in the
6 Lawsuit:
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8 All natural and juridical persons within the United States who were
9 called by NCO, without prior express consent, on their paging service,
10 cellular telephone service, mobile radio service, radio common carrier
11 service, or other service for which they were charged for the call,
12 through the use of any automatic telephone dialing system (including an
13 automated dialing machine, dialer, and auto-dialer) or artificial or
14 prerecorded voice, between August 2, 2003 and September 10, 2008, *i.e.*,
15 the date the Order of Preliminary Approval of Class Action Settlement
16 was entered by the Court.

17 3. However, the Class Members do not include any officer, director,
18 attorney, or heir or assign of NCO. Further, the Class Members do not include any
19 judicial officer or juror who may consider this case.

20 4. CLASS REPRESENTATIVE AND CLASS COUNSEL
21 APPOINTMENT – Pursuant to Fed. R. Civ. P. 23, the Court finally certifies Plaintiff
22 Douglas E. Bellows as the Class Representative and HYDE & SWIGART and the
23 LAW OFFICES OF DOUGLAS J. CAMPION as Class Counsel.

24 5. NOTICE AND CLAIM PROCESS – Pursuant to the Court's
25 Preliminary Approval Order, NCO, with the cooperation of the third-party class action
26 administrator, complied with the approved notice process. NCO published the
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1 summary notice in the USA Today in 2 Monday editions on September 22 and 29,
2 2008. NCO also posted the full notice on the Settlement Website. Considering the
3 Class Members were unidentifiable, the form and method for notifying the Class
4 Members of the settlement and its terms and conditions was in conformity with this
5 Court's Preliminary Approval Order and satisfied the requirements of Fed. R. Civ. P.
6 23(c)(2)(B) and due process, and constituted the best notice practicable under the
7 circumstances. The Court finds that the notice process was clearly designed to advise
8 the Class Members of their rights. Further, the Court finds that the claim process set
9 forth in the Agreement was followed and that said process was the best practicable
10 procedure under the circumstances.

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13 6. FINAL CLASS CERTIFICATION – The Court again finds that the
14 Lawsuit satisfies the applicable prerequisites for class action treatment under Fed. R.
15 Civ. P. 23, namely:

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17 A. The Class Members are so numerous that joinder of all of them in the
18 Lawsuit would be impracticable;
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20 B. There are questions of law and fact common to the Class Members,
21 which predominate over any individual questions;
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23 C. The claims of the Plaintiff are typical of the claims of the Class
24 Members;
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26 D. The Plaintiff and Class Counsel have fairly and adequately represented
27 and protected the interests of all of the Class Members; and
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1 E. Class treatment of these claims will be efficient and manageable, thereby
2 achieving an appreciable measure of judicial economy, and a class action
3 is superior to other available methods for a fair and efficient adjudication
4 of this controversy.
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6 7. The Court finds that the settlement of the Lawsuit, on the terms and
7 conditions set forth in the Agreement, is in all respects fundamentally fair, reasonable,
8 adequate, and in the best interest of the Class Members, especially in light of the
9 benefits to the Class Members; the strength of the Plaintiff's case; the complexity,
10 expense, and probable duration of further litigation; the risk and delay inherent in
11 possible appeals; and, the risk of collecting any judgment obtained on behalf of the
12 class.
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14 8. SETTLEMENT TERMS – The Agreement, which has been filed with
15 the Court and shall be deemed incorporated herein, and the proposed settlement are
16 finally approved and shall be consummated in accordance with the terms and
17 provisions thereof, except as amended by any order issued by this Court. The material
18 terms of the Agreement include, but are not limited to, the following:
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21 A. NCO must pay Plaintiff \$1,000 for his services as the Class
22 Representative;

23 B. NCO must pay each of the 29 Class Members who made a timely
24 accepted claim \$70;

25 C. NCO must pay a total *cy pres* award of \$197,970 to one or more
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1 mutually agreed-upon organizations, subject to approval by Special
2 Master Hoffman;

3 D. NCO must comply with the Stipulated Injunction filed with the Court
4 and entered along herewith; and
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6 E. NCO must pay Class Counsel a total of \$300,000 in attorneys' fees,
7 costs, and expenses.

8 9. STIPULATED INJUNCTION – The Court finally approves and hereby
9 enters the Stipulated Injunction. Pursuant to the Stipulated Injunction, NCO shall (i)
10 conduct regular training sessions with all NCO debt collectors to ensure that they
11 understand their obligation to stop calling a consumer's cell phone or other wireless
12 number when requested by the consumer; (ii) revise its FDCPA collector testing
13 materials to include questions regarding a collector's obligation to stop calling a
14 consumer's cell phone or other wireless number when requested by the consumer; and,
15 (iii) use its best efforts to ensure that all existing and newly hired NCO debt collectors
16 execute an acknowledgement confirming their understanding of their obligation to stop
17 calling cell or wireless numbers upon request. As set forth in the Stipulated Injunction,
18 NCO shall also provide Class Counsel proof of compliance with the injunction and
19 shall comply with the provisions permitting Class Counsel to ensure compliance with
20 the Stipulated Injunction. The Stipulated Injunction will lapse and expire 12 months
21 after it is entered by the Court.
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26 10. EXCLUSIONS AND OBJECTIONS – A total of 67 exclusions were
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1 timely submitted, but NCO has objected to 62 of the exclusions submitted by Donald
2 A. Yarbrough, as the purported lawyer for the 62 proposed opt-outs. NCO contends
3 the 62 exclusions submitted by Mr. Yarbrough were not submitted in compliance with
4 the Court's Preliminary Approval Order because the Class Members did not sign their
5 exclusions. NCO requests that these 62 exclusions be ruled upon in a separate order,
6 so as not to delay the finality of this order.
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9 11. As requested, the Court will rule upon the validity of the 62 exclusions
10 submitted by Mr. Yarbrough in a separate order. As to the remaining 5 Class
11 Members who made valid and timely requests for exclusion (*i.e.*, Daniel Laplante;
12 Kevin T. Lemieux; Gretchen Moehrle; Carolyn Palmer; and, Lewis A.D. Smith), the
13 Court hereby excludes these individuals from the class and settlement.
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15 12. The Class Members were given an opportunity to object to the
16 settlement. Only 1 Class Member filed an objection, but the objection was withdrawn.

17 13. This order is binding on all Class Members, except those individuals
18 identified in ¶ 11 above, who validly and timely excluded themselves from the class.
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20 14. RELEASE OF CLAIMS AND DISMISSAL OF LAWSUIT – The Class
21 Representative, Class Members, and their successors and assigns are permanently
22 barred and enjoined from instituting or prosecuting, either individually or as a class, or
23 in any other capacity, any of the Released Claims against any of the Released Parties,
24 as set forth in the Agreement. Pursuant to the release contained in the Agreement, the
25 Released Claims are compromised, settled, released, discharged, and dismissed with
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prejudice by virtue of these proceedings and this order.

15. The Lawsuit is hereby dismissed with prejudice in all respects.

16. This order is not, and shall not be construed as, an admission by NCO of any liability or wrongdoing in this or in any other proceeding.

17. Without affecting the finality of this Final Order and Judgment in anyway, the Court hereby retains continuing and exclusive jurisdiction over the Parties and all matters relating to the Lawsuit and/or Agreement, including the administration, interpretation, construction, effectuation, enforcement, and consummation of the settlement and this order.

ORDER

IT IS SO ORDERED.

DATED: 12/22/08



THE HONORABLE THOMAS J. WHELAN
UNITED STATES DISTRICT COURT JUDGE

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